

State Purchasing

August 5, 2015

Deep Purchasing Thoughts

- Purchasing is contained in Title 67, Chapter 57
 - Chapter 57 is not user friendly
 - Admin, Public Works, Purchasing, Postal, Group Insurance etc...
 - Should purchasing have its own chapter?

Purchasing

- 67-5714—creates Division
 - Administrator is exempt, appointed by Dept. of Admin with approval by Governor
 - May employ additional personnel
 - Q: Is this enough independence?

Purpose

- 67-5715. PURPOSE OF ACT. The Idaho legislature, recognizing that an offered low price is not always indicative of the greatest value, declares it to be the policy of the state to expect open competitive bids in acquisitions of property, and to maximize competition, and maximize the value received by the government of the state with attendant benefits to the citizens.

Definitions

- Idaho Code 67-5716:
- (2) Agency--Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but **excluding** other legislative and judicial branches of government and **excluding** the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction, and, as provided in section [67-5728](#), Idaho Code, excluding Lewis-Clark State College, Idaho State University, Boise State University and Eastern Idaho Technical College.

Powers and Duties

Idaho Code 5717—(1) acquire according to provisions of chapter all property for state agencies

(2) Shall acquire all property unless excepted by competitive bid

(3) Shall determine based on requirements in specification the lowest responsible bidder

Powers and Duties Cont.

- (5) shall enter into all contracts and agreements and modifications thereto
- (6) Shall when economically feasible and practical consolidate requisitions and acquire property in amounts as large as can be efficiently managed and controlled
- (8) May require performance bonds
- (9) May enter into open contracts
- (10) May enter into contract beyond one year –but must allow no penalty for cancellation
- (11) Rulemaking authority
- (12) Negotiations in accordance with Rules of Division
- (13) May inspect property delivered to determine if it meets minimum bid specs

Notice/Bid Procedure

- Idaho Code 67-5718
 - (1) Agency submits requisition indicating available funds
 - (2) Notice posted under Rules (electronically)
 - <https://purchasing.idaho.gov/iprobids.html>
 - (3) Idaho bid solicitation preference
 - (4) All bids opened in public view at time and place; award to lowest responsible bidder after evaluation; allows for best and final offers, bids may be rejected pursuant to rules
 - (5) When bids and quality are same—Idaho Preference; Idaho preference for printing
 - (6) Electronic “sealed” bids can be accepted

Multiple Awards

- 67-5718A Administrator may award to 2 or more bidders IF:
 - Necessary to furnish property and quantities
 - Expeditious and cost efficient; or
 - Compatibility
 - Requires a written determination showing satisfaction of one or more of the criteria
 - Multiple award SHALL not be made when a single bidder can reasonably serve the needs, and only to the extent necessary to serve the needs

Miscellaneous Provision

- 67-5719—Supplies on hand, estimated needs
- 67-5720—Emergency purchases on open market (if not in stocks under 67-5727)
 - Only one vendor, federal surplus, educational discounts and discretion of Director of Admin
 - Immediate delivery is required and emergency declared
 - Still requires publication of a sole source procurement unless life threatening emergency

Miscellaneous

67-5721—Option to acquire non-owned property—requires adherence to other provisions of chapter

67-5722—Administrator may exchange property by notice and bid

Finding that all other methods of disposal will yield lesser monetary return to state; head of agency may declare surplus

Miscellaneous

- 67-5723—Discounts for prompt payment, and bulk acquisitions—administrator proposes rules for discounts
- 67-5724--Federal contracts exempt from Notice, Public Advertising, Competitive Bids, Delivery prior to payment
- 67-5724A—Administrator may negotiate for procurement at or below federal price; extension of federal offer must be done in writing

Records

- 67-5725—Records must be retained and are public; if a bid is canceled prior to award—bids received are returned and exempt from disclosure
- All contracts in writing and signed by parties. Filed along with bids/specs/and all other docs in office of Administrator
- Contracts/Agreements in Violation of chapter—VOID—money advanced is to be repaid

Prohibitions

- 67-5726—No contract transfer without approval of Administrator
- No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.
- No officer or employee may influence or attempt to influence
- No conspiring with Vendor or agent
- Must use open contract; Cannot accept property that does not meet specs or performance test results
- Deprivation/ Influence is not written reports based on substantial evidence on matter of concern to the Administrator
- Cannot prep bid and then submit a bid

Higher Ed

- May establish policies and procedures substantially consistent with the requirements for procuring approved by the State Board
- Must provide justifiable cause for not using state open contract

APA

- *67-5729* Rules adopted in accord with Chapter 52, Title 67
- Determinations Officer
 - All bidders have standing
- Judicial Review

Vendor Qualification

- 67-5730 Must be qualified to submit bids
- May be disqualified (6 mos. To 5 yrs):
 - Failure to perform
 - Influence specs in vendor's favor
 - Obstruct or delay process
 - Perjury in a vendor DQ hearing
 - Knowingly violate provisions of chapter
 - Debarment, suspension, or ineligibility from Federal Contracting
- Notice and hearing
- Conditional participation in Director of Department of Admin's discretion

Appeals

- The section is titled “appeals” but the text also discusses challenges to bid specifications and applications for appointment of a determinations officer
- Under subsection 3, neither a challenge nor an appeal is subject to the APA (only a contested case if conducted by a determinations officer would be)
- This section would likely benefit from a substance rewrite and reorganization...

Additional Issues for Consideration

- **Contract Management and Administration**
 - Should be defined
 - Administrator enters into contract, but code is silent about monitoring/management after
- **Examples: Administration:** actions relating to changes in contracts (renewals/extensions), includes receipt, review and retention of Contract and contract-related documents, and exercise of remedies.
- **Management:** actions taken to ensure agency and contractor comply with contract requirements. Includes solicitation development, contact development and close-out, but also include contract monitoring, evaluation of deliverables, invoice review, payment approval, etc. Management might also include management of state-owned property used in contract performance, dispute resolution, and day-to-day management.

Alternatives

- Flexibility: Competitive negotiations, Reverse Auctions—Authorize Administrator to allow for alternatives in best interest of state
- Cooperative Contracting
 - Joint Powers not sufficient
 - Counties have broader authority under 67-2807

Limits of the Law

- Purchasing is complex, and the laws are complex.
 - Law is designed to provide consistency, predictability and a foundation
 - Personalities can override the law
 - Is the problem a legal one or a personality one?
 - More laws usually mean more ways to challenge

Questions